

2007

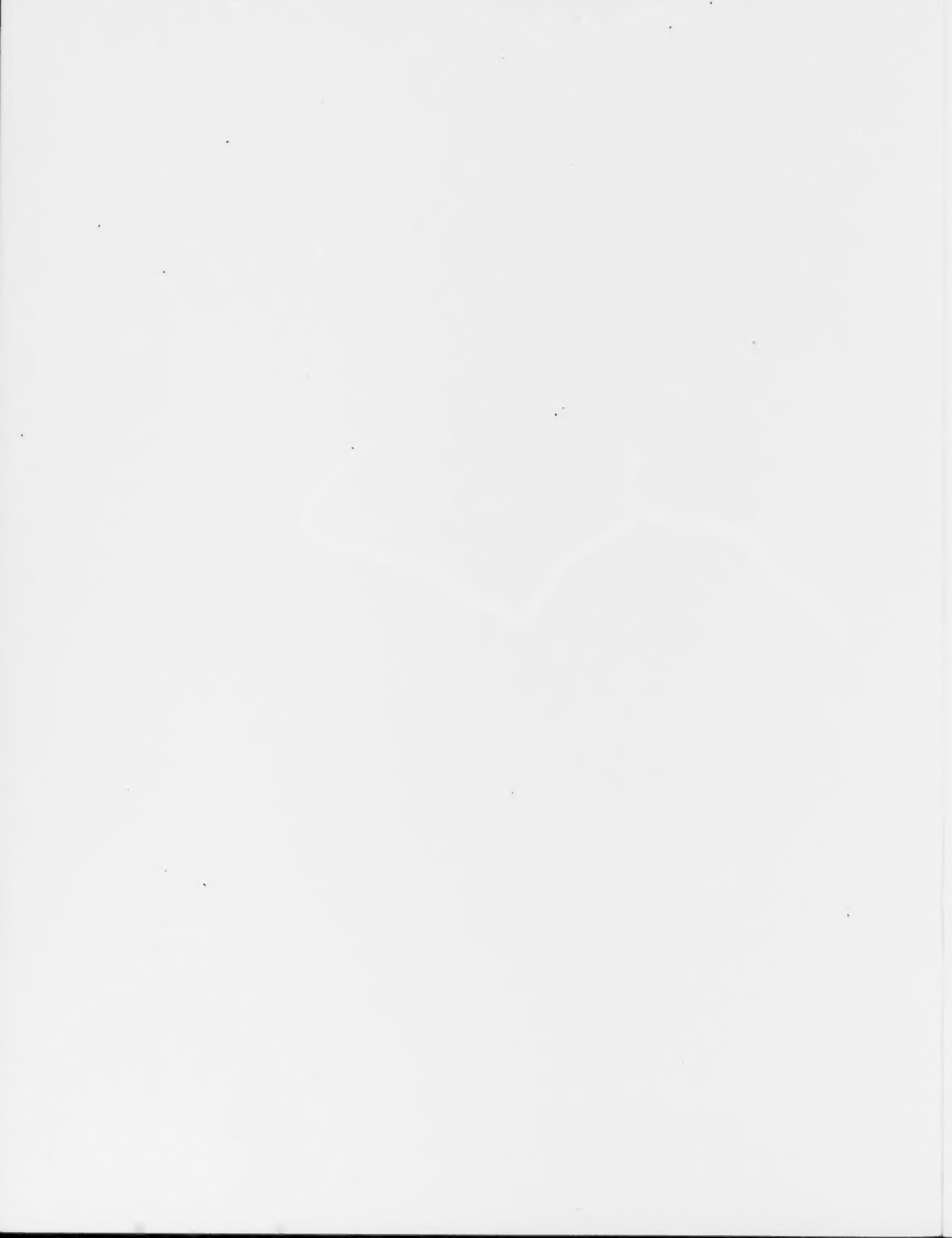
ANNUAL REPORT

Office of the
Police Complaint Commissioner

British Columbia, Canada

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Independent ♦ Impartial ♦ Civilian





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OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

Speaker of the Legislative Assembly
Suite 207
Parliament Buildings
Victoria, BC V8V 1X4

Dear Mr. Speaker:

It is my honour to present to you and to the members of the Legislative Assembly the 2007 Annual Report for the Office of the Police Complaint Commissioner.

This report has been prepared in accordance with section 51.1(1) of the *Police Act*, RSBC 1996, c.367.

Yours truly,

Dirk Ryneveld, Q.C.,
Police Complaint Commissioner

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Victoria Office:

3rd Floor, 756 Fort Street, PO Box 9895, Stn Prov Govt
Victoria, British Columbia, V8W 9T8
Tel: (250) 356-7458 / Fax: (250) 356-6503

Vancouver Office:

#320 - 1111 Melville Street
Vancouver, British Columbia, V6E 3V6
Tel: (604) 660-2385 / Fax: (604) 660-1223

Toll Free enquiries through *Enquiry BC* at 1-800-663-7867



Office of the
Police Complaint Commissioner
British Columbia, Canada

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Photo courtesy of Tourism Victoria and Robert Forbes

Commissioner's Message

As I write this Commissioner's Message respecting our activities for the calendar year 2007, the 2008 Spring sitting of the Legislature has concluded. Regrettably, the House has risen without the introduction of urgently needed and long-awaited *Police Act* amendments. With a provincial general election less than a year away, it appears to be common sentiment that a fall sitting is unlikely.



Delayed reform

From the outset of my six year tenure as Police Complaint Commissioner, I have been advocating significant change to the *Police Act*. My White Paper and Draft Police Complaint Act were appended to my 2004 Annual Report. Significant stakeholder feedback and consultation followed, which resulted in my Green Paper on *Police Act* Reform (2006). Following my 2005 recommendations that the Solicitor General conduct an audit of the Vancouver Police Department, Josiah Wood Q.C. (now PCJ) was appointed to conduct an audit of the municipal police forces in this province and to review the Police Complaint process. In his February 2007 Report, which was informed by extensive research and stakeholder consultation over 18 months, Mr. Wood made 91 recommendations for reform, most of which concurred with my own recommendations. As noted by Mr. Wood:

It became obvious early in this review, that the police complaint commissioner had few effective powers with which to ensure that all public complaints were thoroughly investigated and properly concluded....

It is to the maintenance of public confidence in the integrity of the police, that strong effective oversight of the current complaint process is so essential. Thus, in response to what I perceive to be the inadequate oversight powers presently vested in the office of the police complaint commissioner, I have recommended a substantial shift in the balance presently existing, mindful of the fact that in doing so I am augmenting the powers of an authority as equally independent from the fear of political interference as are the police themselves.

Mr. Wood's February 2007 Report outlined a clear, considered and balanced legislative reform package to enhance civilian oversight of the municipal police complaint process in this province. Mr. Wood's extensive consultation process offered legislators the necessary confidence that they could focus on attending to drafting the statute without embarking on yet another round of interest group negotiation, which had regrettably resulted in some of the most serious defects in the present statute. Earlier this year, prospects for a principled approach to reform appeared promising when the Lieutenant Governor read the Throne Speech at the opening of the 2008 Spring Session, indicating that Mr. Wood's recommendations would be implemented.

Despite having been well aware that the failure to introduce the amendments in the Spring of 2008 would very likely imperil the amendments for at least further year, the amendments were not introduced. The amendments have been in the hands of the Solicitor General's Ministry. It

is my earnest hope that, if and when a bill is finally introduced, there will be no watering down of the enhanced civilian oversight model recommended by Mr. Wood.

Based on my expectations as to the timing of reform, I had planned to re-shape the Police Complaint Commissioner's office by using 2008 to hire personnel with specific qualifications to assist us in addressing our growing workload and prepare for the coming reforms, and particularly the contemporaneous oversight model recommended by Mr. Wood. During the transition period I had hoped to train the new personnel so that when the legislated reform took effect, my staff would be in a position to "hit the ground running" and avoid potential problems that might otherwise arise. In this area of law, one cannot afford the risk of committing errors due to lack of understanding, because the confidence of the public and police alike are at stake, which once lost, are extremely difficult to regain.

Despite the delay, I find that I can no longer wait before hiring and training new staff, due to increased workload (both in volume and complexity) and demands on our time to do outreach, training and participation in various inquiries and research. I therefore intend, despite the delays, to "step out in faith" and hire the personnel and prepare the office to handle the anticipated legislation.

All this is especially important because my term as Police Complaint Commissioner expires in February 2009. I want to ensure that the next Police Complaint Commissioner inherits a smoothly-running organization. I was not so fortunate when I took office in February 2003 following the resignation of the first commissioner. I consider it to be my responsibility to leave the office in much better shape than I found it.

The position of Police Complaint Commissioner is a difficult position. Whatever one's previous training or experience, it is quickly realized that this role is quite unique, and it takes time to fully acquaint oneself with the many nuances and competing forces that are at play. I can candidly state that it is difficult to believe that, having achieved what I believe to be the expertise necessary to do the job well, my 6-year term has almost come to an end. I must also confess to some frustration that after all my hard work advocating reform, I may not see necessary reforms come to fruition during my term, and I may not be in a position to shepherd in the new amendments and oversee their implementation. I will do everything I can to assist my successor, who may find him or herself as new Commissioner being responsible for administering a new statute.

Troubling observations

The issues I outlined in my White Paper and Draft Police Complaint Act attached as appendices to my 2004 Annual Report (released in June 2005) outlined many of the issues that were in urgent need of reform. Most of those concerns were again highlighted in Josiah Wood Q.C.'s, Report.

Mr. Wood made two principal findings that all members of the public should find very troubling, and that legislators should keep at the forefront as they assess the reform bill that is ultimately introduced by government.

First, Mr. Wood found, based on an audit of police complaint files, that the more serious the allegation against a police officer, the less likely it is to be thoroughly investigated. Mr. Wood found an “unacceptably high risk that the more serious public trust complaints will not either be investigated thoroughly or concluded appropriately”.

Second, Mr. Wood described the factor that caused him the greatest concern as his review unfolded:

*To that must be added the factor that caused me the greatest concern as this review unfolded, **namely the lack of complete acceptance by the police of the concept of full civilian oversight.** [emphasis added]*

I can only add that Mr. Wood’s conclusions reflect my own experience.

I echo Mr. Wood’s emphasis, elsewhere in his Report, that the public should not be left with the impression that all, or even the majority, of complaint investigations, including serious complaint investigations, are inadequate. Nor have I seen proof of the experience in other jurisdictions where police misconduct and corruption are extensive and even rampant. But it remains deeply troubling that we find in British Columbia municipal policing, ten years after passage of the *Police Act*, a significant minority of inadequate investigations – particularly where most of those inadequate investigations relate to serious complaints such as unnecessary use of force.

It has been my observation that in sensitive and serious investigations, that the resolve of internal investigators to vigorously investigate their “own” members will too often stand in marked distinction to the approach the same investigators might take with a civilian accused of the same conduct. One need not be a conspiracy theorist to understand why this is so. As pointed out by Mr. Wood, a number of factors are at play. These include (i) inadequate training of professional standards investigators; (ii) lack of motivation to perform this “unpleasant duty” to the necessary high standard; (iii) lack of cooperation by police officers in a statute that does not compel their cooperation and (iv) a culture of policing which can create a mindset that, as Mr. Wood stated, “resists both the thorough investigation of complaints and the existence of civilian oversight”.

To Mr. Wood’s observations I would only add that I continue to find it noteworthy – as candidly acknowledged by many professional standards officers – as to how much easier it is for investigators to thoroughly investigate an “external” police department than it is for them to investigate their own. As I have previously stated, the quality of external investigations ordered by this office has been very good, and that is precisely why Mr. Wood has recommended a greater use of external investigators, including their mandatory use in police-involved death cases.

To one extent or another, the difficulties identified by Mr. Wood will be a fact of life for as long as we have a system where municipal police departments retain authority to investigate their fellow members. These are precisely the factors making it so important that the civilian body that reviews these investigations be armed with the legal and administrative resources to ensure that deficiencies are identified and corrected. To fail to implement the reforms necessary to ensure police accountability can only serve to erode public confidence in the police

and in the complaint system. I hope the House understands this, and thus understands the urgency of the reform agenda I have been advocating since the issuance of my first Annual Report, as reinforced by Mr. Wood, who stated:

... I have reached the conclusion that the ex post facto oversight model presently found in Part IX of the Act is inadequate, at least insofar as it relates to the conduct of the investigation of serious public trust complaints. Oversight, if it is to be both timely and effective, needs to occur during, not after, the investigation of a public trust complaint and it must of necessity be based upon full access to that investigation as it unfolds.....

Further, and in order to ensure that this amendment achieves its full purpose, the Act must provide that, for the purpose of giving effect to this expanded oversight role, the police complaint commissioner must, on an ongoing basis and on request, be afforded full access to the investigative file and any other documents or information in the possession of the police which may be relevant to that investigation. Finally, in order to ensure that any advice or direction provided by the police complaint commissioner is complied with, the police complaint commissioner must have a specific statutory power to order an external investigation in those instances where the advice and/or direction given with respect to an ongoing investigation is not accepted and complied with by the investigator. Such a power necessarily would include the power to order that the full investigative file accumulated to that point in time be turned over to the new external investigator.

Requests for reconsideration by the Discipline Authority

In recognition of the fact that the current legislation provides few legal options to a Police Complaint Commissioner (PCC) where he finds himself faced with an inadequate decision by a Disciplinary Authority, I have turned to the common law to help me address those instances where a discipline authority or underlying investigation reflects what the law would regard as a "jurisdictional defect".

The principle is reflected in the common law of "reconsideration", under which a statutory decision-maker is entitled to reconsider and make a new decision in cases where the law would regard his previous decision as a nullity. In a 2005 decision, I described the principle, and my reason for relying on it:

In my view, a discipline authority is not functus officio when he has made a determination ... that is tainted by a fundamental jurisdictional error. Where such an error has been made, there are good legal and practical reasons to give the discipline authority an opportunity to reconsider the matter prior to my making a decision whether to order a Public Hearing. Reconsideration may make a Public Hearing unnecessary. Alternatively, it will provide a better foundation for a decision whether to hold a Public Hearing.

In practice, the remittal process only applies in limited circumstances. The PCC must first be satisfied that the disposition is tainted by a jurisdictional defect (as opposed to a mere error of law or a result the PCC merely disagrees with); he must be satisfied that the case is not unsuitable for remittal for other reasons, including the nature of the case or delay; if he does remit, he will advise the Discipline Authority (DA) that he cannot compel reconsideration and that the DA needs to be independently satisfied that the case is appropriate for reconsideration; he will also make clear to the DA that remittal is not a substitute for a Public Hearing and that the PCC intends to make a decision whether to order a Public Hearing following any reconsideration.

Despite these limitations, I have found the process to have been constructive. In many cases, after reviewing the reasons for my proposal, a Discipline Authority has issued a new finding or new discipline. In most of those cases, the new findings have resulted in a proper decision, that ought to have been made the first time, and which makes a Public Hearing unnecessary.

Public Hearing arranged

Mr. Wood's 2007 Report has this to say about the present *Police Act* Public Hearing process:

...the power to order a Public Hearing is an equally poor remedy for an erroneous disposition in the case of a complaint that does not raise issues that meet the high public interest standard required to justify engaging that seemingly complex, expensive and generally unsatisfactory process...

One other matter that was frequently the subject of comment ... is the ineffective, indeed cumbersome and expensive, Public Hearing process currently in place.

Despite these deficiencies, I deemed it necessary to call a Public Hearing with respect to a complaint filed by a citizen who suffered serious head injuries at the Victoria Police Department cellblock in 2004, when while handcuffed, he was "taken down" to the cement floor by an officer. Following a criminal investigation that did not result in charges, Acting Chief Naughton as the Discipline Authority determined in 2006 that the complaint was not substantiated. Three weeks after receiving the file, I asked A/Chief Naughton to reconsider his decision, giving him my analysis and the basis for my concerns. In this case however, the Discipline Authority was not persuaded and affirmed his decision in November 2007. Accordingly I deemed it necessary to arrange for a Public Hearing and did so in early 2008. Former BC Supreme Court Justice Hutchison was appointed as the adjudicator and the matter was set for Public Hearing to commence in Victoria on June 16th 2008. The matter is ongoing at the time of writing. It is perhaps telling that the *Police Act* system in this case resulted in the Public Hearing being ordered 4 years after the event despite the fact that the review by my office took something less than 3 weeks. Whatever the outcome of the Public Hearing, the delays, and the reasons for those delays, are sufficient in themselves to emphasize the need for *Police Act* reform.

Frank Paul Inquiry

One of the powers the *Police Act* grants to the Police Complaint Commissioner is the power to recommend a public inquiry. It was pursuant to that power, located in s. 50(3)(f) of the *Police Act*, that I took the unprecedented step in January 2004, at the end of my first year as Police Complaint Commissioner, of recommending to the Attorney General that a public inquiry be ordered into the circumstances surrounding the death of Frank Paul.

I will state here only what my counsel told Commissioner Davies in opening comments, namely, that I am gratified that despite the passage of time and the initial negative responses of members of the executive branch to my January 2004 call for an inquiry, a public inquiry was ultimately ordered in August of 2007. The Inquiry's mandate is to provide Mr. Paul's family and the public with a complete record of the circumstances relating to Mr. Paul's death, and to recommend changes considered necessary to the rules, policies and procedures of institutions, including the Vancouver Police Department, the Coroner and the Police Complaint Commissioner.

Because this matter remains before Commissioner Davies for consideration and deliberation, I do not intend to make further comment here regarding the Public Inquiry and the evidence that was led. I will note here only that I instructed my staff and counsel to assist the Inquiry in every way possible, and that included making an extensive policy submission in May 2008 which I hope the Inquiry will find to be of some assistance in developing its recommendations regarding the rules, policies and procedures that ought to be properly in place where investigations are conducted in cases where persons die in police-involved incidents.

Tasers



The use (and misuse) of conducted energy weapons – commonly referred to as TASERS, has consumed a great deal of our time. Although many of the incidents reported by the media involved the RCMP, our provincial police forces have not been immune from criticism or complaints respecting the use of TASERS. Although the first complaint concerning the use of a TASER arrived in 2001 during my predecessor's term, my office became actively involved in the use of TASERS in 2004 when, during the investigation of an incident in Vancouver where a man died shortly after having been

"tasered", I ordered the Victoria Police to conduct an external investigation into the incident. At the same time I requested then Chief Constable Battershill of the Victoria Police Department to conduct a study and issue a Report on the use of TASERS and make suggestions for protocols. It must be remembered that my office cannot ban or approve or make regulations for the use of TASERS or other weapons in the police arsenal. That is the sole jurisdiction of the Solicitor General in this province. The purpose of the Interim Report published in 2004 and the Final Report published in 2005 was to raise awareness of concerns about the safety of the TASER and to attempt to promote further study as to if and how and in what circumstances they should be used to attempt to avoid serious injury or death risks to subjects. Both of those reports can be found under Archived Reports on our website: www.opcc.bc.ca. This was the first time to my knowledge that a multi-disciplinary panel of experts were called together to discuss the concerns surrounding the use of TASERS. That Medical Review Panel included a forensic

pathologist, an exercise physiologist, a cardiologist, a forensic psychiatrist, the Chief of Emergency Medicine, a neurologist, a representative of the Police Training College, an Advanced Life Support Paramedic, and the District Superintendent of the BC Ambulance Service. The recommendations in the Reports were subject to peer review and published with a view to alerting the appropriate authorities to the issues that in our view required further study. The interim Report recommended *inter alia*: standardized training, mandatory reporting, acquisition of new TASER technology (ie X-26 rather than M-26) excited delirium training for police; and the development of restraint protocols.

Although there was sporadic media attention to the alleged misuse by police of TASERS both in Canada and the United States, the video-taped tragedy at the Vancouver Airport received unprecedented media coverage world-wide. That incident in turn sparked nearly a dozen investigations or inquiries most of which are still-ongoing. Because of my early involvement in the 2004 and 2005 TASER Reports conducted by the Victoria Police, I have been requested to make submissions to at least two of those Inquiries. In March 2008 I appeared in Ottawa before the House of Commons Special Committee on Tasers to give my presentation. I appeared in June 2008 before former Mr. Justice Braidwood of the BC Court of Appeal, sitting as a Provincial Commissioner of Inquiry into the use of Tasers in this Province.

Harmonization with the RCMP

We are continuing to work with Paul Kennedy, the head of the agency providing oversight respecting the RCMP, to do mutual outreach and ensure that there is a “no wrong door” policy in place in both of our offices. This issue has becoming increasingly important in light of the increase in integrated units of police involving both municipal and RCMP officers. Although each of us has to operate in a federal system and is confined to our own jurisdiction and legislative mandate, we ensure that complaints directed incorrectly to the wrong agency are not overlooked, by forwarding the complaints to the agency that has jurisdiction to act.

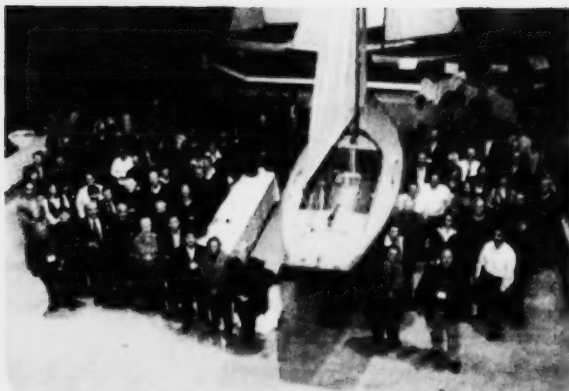
Additionally, Mr. Kennedy and I have been meeting on a regular basis on issues of mutual interest and concern. For example the appropriate use of the TASER is an issue that has occupied much of our time. We have also both given considerable thought to best practices and recommendations for reform of the oversight of policing.

CACOLE and INIOP

It is extremely important for my oversight colleagues and I to meet on an annual basis by attending the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) conference. Last year (2007) the conference was held in Halifax, Nova Scotia.



Openness and Transparency Panel: (left to right) Moderator, Robert Mitchell, QC, CACOLE President and Chair; The Honourable Justice O'Connor, Head of the Arar Commission; Bruce Brown, Deputy Police Complaint Commissioner; The Honourable Patrick LeSage, Q.C.,



CACOLE Conference 2007 (Halifax, Nova Scotia)

This year it was held in Regina, Saskatchewan. This year's theme is "Best Practices and other Lessons in Oversight". The attendance at these conferences has increased yearly with attendees from around the globe. It is the single best source of training for oversight agencies that I have seen. At the Halifax conference

last year one panel featured both Justice Dennis O'Connor who headed up the Arar Commission as well as Justice Patrick LeSage, who made recommendations for reform of Ontario's oversight of policing regime. This conference attracts not only civilian investigators and analysts, but also jurists, police investigators, union representatives, politicians, lawyers, media spokespersons and academics. CACOLE has in recent years been regarded as one of the foremost associations that attracts attendees world-wide. One half day at this conference was dedicated to international speakers and international topics to enable us to learn from each other. Speakers this year came from Ireland, Northern Ireland, New Zealand, Belgium, the UK, and Grand Cayman.

As reported in earlier Annual Reports, my efforts at promoting the creation of the International Network of Independent Oversight of Policing (INIOP) are also coming to fruition. That fledgling organization is "piggy-backing" on CACOLE sponsored conferences and INIOP meetings are held concurrently with CACOLE conferences. It is of great assistance to CACOLE to have INIOP meetings held concurrently because the international attendees greatly enrich our discussions and considerations.

Staffing

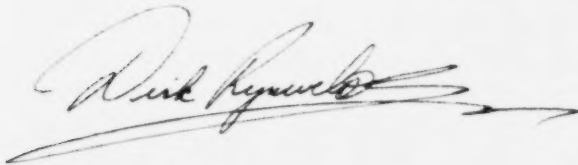
One of the most consistent messages that I want to bring forward is that the Office of the Police Complaint Commissioner has been blessed with extremely competent and dedicated staff, who work tirelessly and uncomplainingly in an extremely difficult field. Their commitment to excellence and fair-minded review of the files is a tribute to each one of them. They labour under a tremendous workload with the hope that long-awaited amendments to the *Police Act* will soon occur, permitting us to perform our duties with more efficiency and effectiveness. In addition to reviewing files, our investigative analysts are involved with outreach and training. We have been involved in training sessions with various police organizations as well as conducting training sessions at the Justice Institute. We deem it important for new aspiring police officers to understand the complaint process and have some understanding as to how we view the role of police. We have also been involved in training supervisors and internal investigators. These sessions have been very worthwhile but also time-consuming.

As I have mentioned at the outset of this message, we are disappointed with the delay in drafting of the legislation and the inability to bring this matter forward for debate during the current sitting of the legislature. I have decided that I simply cannot wait for the new legislation

before hiring more analysts and support staff to keep up with the heavy workload. I shall be hiring more staff in 2008 and trust that the Special Committee on Finance will be as supportive of that decision as they have been on previous budget requests I have made.

Finally, it would be remiss of me to not express my gratitude for the exceptional contribution of our Commission Counsel, Frank A.V. Falzon, Q.C., in assisting me in my role as Police Complaint Commissioner. Mr. Falzon has given me excellent advice on thorny issues, and has ably advocated on the office's behalf at various public forums including the different levels of court in this Province, as well as at the Frank Paul Inquiry. I am very grateful for his guidance, support, and prudent advice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dirk Ryneveld', with a long, sweeping horizontal flourish extending to the right.

Dirk Ryneveld Q.C.
Police Complaint Commissioner
June 2008

The Organization...

As an independent Officer of the Legislature, the Police Complaint Commissioner provides vigilant and impartial civilian oversight of complaints against police to ensure thorough and competent investigation and fair adjudication that respects all parties, thereby helping assure quality policing and public trust in law enforcement and the complaint process.

The Office of the Police Complaint Commissioner (OPCC) is an independent agency established under Part 9 of the *Police Act*, RSBC 1996, c.367, to ensure that complaints against municipal police in British Columbia are handled fairly and impartially.

The OPCC is responsible for overseeing complaints regarding the conduct of municipal police officers within the Province of British Columbia. The following police departments/agencies fall within our mandate:

Abbotsford Police Department	Oak Bay Police Service
Central Saanich Police Service	Port Moody Police Department
BC Combined Forces Special Enforcement Unit	Saanich Police Department
Delta Police Department	Stl'atl'imx Tribal Police Service
Greater Vancouver Transportation Authority Police Service	Vancouver Police Department
Nelson City Police Department	Victoria Police Department
New Westminster Police Service	West Vancouver Police Department



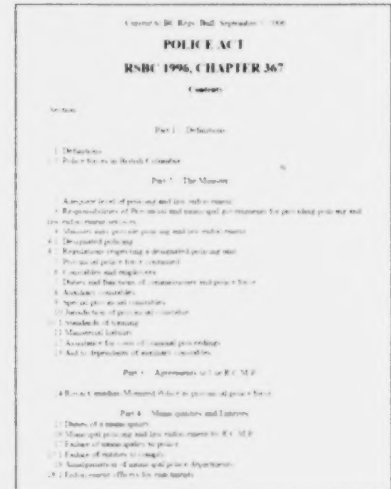
The OPCC provides an accessible way for the public to complain to an independent body about the conduct of any municipal police officer or department. The office was established to ensure that the complaint process is conducted with impartiality and fairness, to both citizens and police officers.

The Police Complaint Commissioner does not have jurisdiction over the handling of complaints against members of the Royal Canadian Mounted Police (RCMP). The RCMP has a federal

Commission to handle complaints against their members. Complaints received at the OPCC with respect to RCMP officers are forwarded to the Commission for Public Complaints Against the RCMP.

The Police Complaint Commissioner is Required to ...

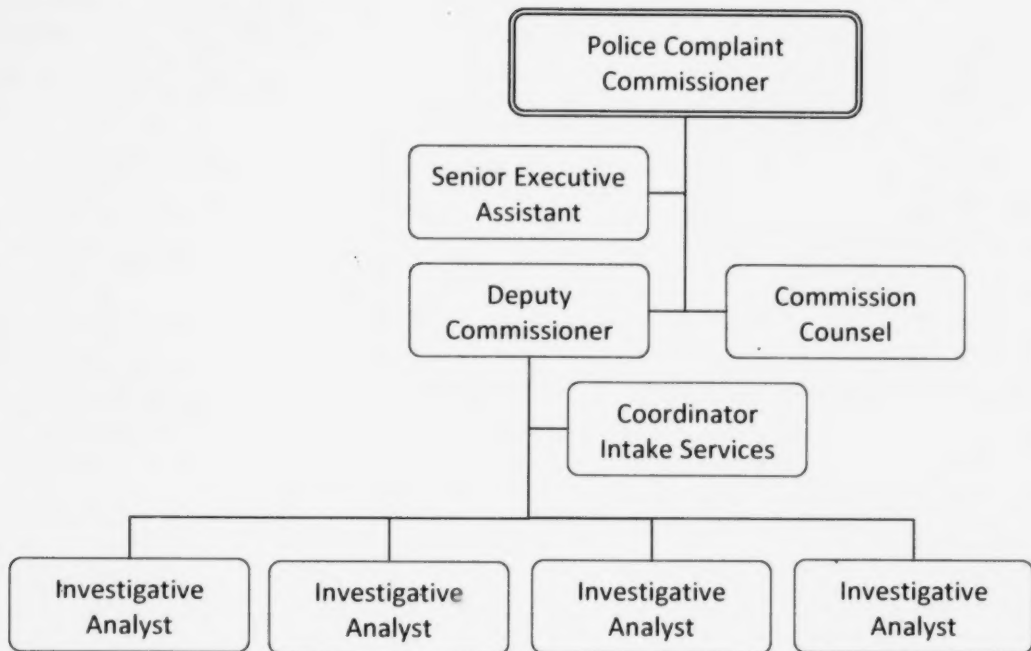
- Oversee the handling of complaints about municipal police officers, police services or policies.
- Receive complaints from any source.
- Maintain a record of those complaints and their dispositions.
- Compile statistical information on complaints against municipal police officers, police services or policies.
- Report regularly to the public about complaints, complaint dispositions and the complaint process.
- Inform and assist the public, Complainants, police officers, police boards and adjudicators with the complaint process.
- Periodically review the complaint process and make recommendations for the improvement of that process in the Annual Report.
- Establish procedures for mediation and guidelines for informal resolutions of Public Trust complaints.



The Police Complaint Commissioner is Permitted to ...

- Engage in or commission research on any matter relating to the police complaint process.
- Make recommendations to police boards about policies or procedures on factors that gave rise to a complaint.
- Prepare guidelines about the process of receiving complaints.
- Make recommendations to the Director of Police Services or the Solicitor General that a review or audit be undertaken to assist police in developing training designed to prevent recurrence of problems revealed by the complaint process.
- Make recommendations to the Solicitor General for a public inquiry under the Provincial Inquiry Act.
- Refer a complaint to Crown Counsel for possible criminal prosecution of a police officer.

The OPCC Consists of...



The Code of Professional Conduct...

The *Code of Professional Conduct* statement of core values affirms that all police officers:

- *Accept the duty to act without favour or personal advantage;*
- *Are committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status; and*
- *Agree to uphold rights and freedoms guaranteed or protected by law.*



All sworn municipal police officers in the Province of British Columbia perform their duties according to the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98. The purpose of this *Code* is to establish that all police officers are provided a guide to assist them in delivering fair, impartial and effective police services to the communities that they serve. The ultimate aim is to maintain public confidence and fairness by ensuring that police officers are held accountable without interfering with their lawful duties.

The *Code of Professional Conduct* identifies the following 12 potential disciplinary defaults:

- Discreditable conduct
- Neglect of duty
- Deceit
- Improper disclosure of information
- Corrupt practice
- Abuse of authority
- Improper use and care of firearms
- Damage to police property
- Misuse of intoxicating liquor or drugs in a manner prejudicial to duty
- Conduct constituting an offence
- Being a party to a disciplinary default
- Improper off-duty conduct

The *Code* also provides guidance in imposing any appropriate corrective or disciplinary measures. Where circumstances are appropriate, and by doing so the organizational effectiveness of the department and the public confidence in the administration of police discipline is not compromised, corrective measures are preferred over punitive measures. The goal for everyone, the officer, the Complainant, the general public and the department involved, is to ensure that any misconduct committed is not repeated or continued. Corrective measures seek to address the problem and provide training or direction to ensure that the officer understands why the particular misconduct is unacceptable and how to improve his or her performance as a police officer.

The *Code* provides the following measures:

- Verbal reprimand
- Written reprimand
- Direction to undertake professional counseling
- Direction to undertake special training or re-training
- Direction to work under close supervision
- Suspension without pay (up to 5 scheduled working days)
- Transfer or re-assignment
- Reduction in rank
- Dismissal

The Discipline Authority may also determine that although a default has been substantiated, neither corrective nor disciplinary measures are warranted. In these situations, the Respondent officer is given "Managerial Advice" or "Advice as to Future Conduct" to ensure that the error or behaviour is not repeated in future similar situations.

Making a Complaint...

Who Can Make a Complaint?

Anyone who has concerns about the actions or behaviour of a municipal police officer, or about the services provided by the department, may make a complaint.



How Do I Make a Complaint?



A complaint may be made orally or in writing by contacting either the OPCC (in person, by phone, by mail, by fax or by email) or at any municipal police department's information counter. The *Police Act* requires a Complainant complete a Form One Record of Complaint. Assistance in completing this form is available either through our office, or the Professional Standards Section of the police department. Blank

Form One Records of Complaint and information packages may be obtained through the OPCC or any municipal police department in the Province.

Information & Complaint
Forms available
on-line at www.opcc.bc.ca

What Happens to my Complaint?

If the complaint is received at the OPCC a copy is forwarded to the Chief Constable of the department where the complaint originated. If a complaint is made at a police department, a copy of the complaint is similarly forwarded to the OPCC.

The complaint is then assigned to the department's Professional Standards' member for investigation. The investigator must provide the Complainant, the Respondent officer and the OPCC with periodic reports on the progress of their investigation. The investigation must be completed within 6 months of the date the complaint was first received, unless an extension has been granted by the Commissioner.



There are 3 types of complaints under Part 9 of the *Police Act*:



Public Trust Complaints

Approximately 90% of the allegations received in 2007 fell under the Public Trust category. A Public Trust complaint may be resolved in one of three ways:

Informal Resolution

A complaint may be informally resolved by the Complainant and the Respondent with the assistance of the Investigator or a professional mediator. A complaint is considered successfully resolved when both parties have signed a letter indicating their agreement. If neither party reconsiders their decision within 10 days, the complaint is concluded as "Informally Resolved".



Summary Dismissal

A Public Trust complaint may be dismissed by the Discipline Authority (the Chief Constable of the Respondent's department) if, following a preliminary review of the allegations it is determined that:

- there is no reasonable likelihood that further investigation will reveal evidence that the officer committed a default;

- the complaint concerns an event that took place more than 12 months prior to the filing of the complaint; and/or
- the allegations have no air of reality or are deemed to be vexatious

If the Complainant doesn't agree with the Discipline Authority's decision, he or she may request a review of the decision by the OPCC. Regardless of whether a request for a review has been received, OPCC Investigative Analysts review all decisions in order to ensure the integrity of the complaint process.

Investigation & Conclusion

A complaint made against an officer will be thoroughly investigated if it is not informally resolved or summarily dismissed. In some circumstances, a complaint may be investigated by an external police agency, but only at the discretion of the Police Complaint Commissioner or the Discipline Authority.

The investigation into a complaint must normally be completed within six months after the date the complaint was received. The Police Complaint Commissioner may grant an extension of this time if necessary. If the Complainant or the Respondent is not satisfied with the results of the investigation, he or she may apply to the Police Complaint Commissioner for a Public Hearing.

Service or Policy Complaints

Service or Policy complaints are complaints about the policies, procedures and services provided by a municipal police department and affect the relationship between the police department and the community. For example, a Service or Policy complaint may be with respect to an insufficient number of police officers assigned to a public event.

Service or Policy complaints are the responsibility of each Police Board. The Police Board must advise the Director of Police Services, the Police Complaint Commissioner and the Complainant of the results, including what course of action, if any, was taken. The Police Board must also provide a summary of the results of any investigation or study.

The Police Complaint Commissioner may make recommendations to the board, but he cannot direct the board to take a particular course of action regarding a Service or Policy complaint.

Internal Discipline Complaints

With some procedural exceptions, Internal Discipline complaints concern police misconduct that is of concern to the officer's employer, but does not affect the officer's relationship with the public. An example of an Internal Discipline complaint may involve a police officer who did not properly secure his or her firearm in the police locker. The principles of labour

law apply to the investigation and processing of Internal Discipline complaints. The Public Trust complaint process does not apply to this category of complaints.

Public Hearings...

Following the conclusion of an investigation into a Public Trust complaint, if the Complainant is not satisfied with the results, he or she may request a Public Hearing.

If the Respondent police officer has received a disciplinary measure more severe than a verbal reprimand, he or she has an automatic right to a Public Hearing upon request.

The Police Complaint Commissioner may also arrange a Public Hearing without having received a request from either the Complainant or the Respondent police officer if the Police Complaint Commissioner believes that the Public Hearing is necessary in the public interest.

Upon receiving a request for a Public Hearing, the Police Complaint Commissioner must consider the following factors before making the decision whether to arrange a Public Hearing:

- The seriousness of the complaint.
- The seriousness of the harm done.
- Whether a Public Hearing is needed to discover the truth.
- Whether there was a flaw in the investigation conducted by the police department, the measures proposed are inappropriate or inadequate, or the Discipline Authority's interpretation of the *Code of Professional Conduct* was incorrect.
- Whether a Public Hearing is necessary to restore or preserve public confidence in the police as well as the complaint process.

Once the Police Complaint Commissioner has determined that a Public Hearing is necessary, the Commissioner must appoint an Adjudicator to preside over the hearing. Associate Chief Justice Dohm of the Supreme Court of British Columbia nominates a retired justice of the Supreme Court or a retired judge of the Provincial Court of British Columbia. The Commissioner then appoints that individual as Adjudicator for the purposes of that particular Public Hearing.



The Commissioner appoints Commission Counsel who may, at his discretion, call any witness who has relevant evidence to give and may also introduce into evidence any record, including any record of the proceedings, concerning the complaint up to the date of the hearing.

The Adjudicator, after hearing all the evidence, must decide if the alleged disciplinary default has been proven on the civil standard of proof – that is, on a balance of probability. If the disciplinary default is proven, the Adjudicator may impose a disciplinary or corrective

measure, or may confirm, increase, or reduce the disciplinary or corrective measures already proposed by the Discipline Authority.

Once a decision has been reached at the Public Hearing, the only appeal available to that decision is to the Court of Appeal on questions of law.

The rules governing Public Hearings and the OPCC policy regarding the ordering of a Public Hearing may be found on the OPCC website at www.opcc.bc.ca.

Public Hearings in 2007

PH06-01

Constable R.C. Eveleigh
Oak Bay Police Department

Incident as Reported

It is alleged that between May 7, 2000 and August 26, 2000, Cst. Eveleigh had provided confidential police information to an individual suspected of criminal activity. As well, the Respondent had inappropriately disclosed PIRS information related to a drug investigation.

Investigation

After a thorough investigation, the Discipline Authority substantiated the allegation of improper disclosure of information. The Discipline Authority held a discipline hearing and determined that Cst. Eveleigh be given a written reprimand, a reduction in rank and a close supervision order for a period of 12 months arising from the events that had occurred. Cst. Eveleigh could only be reinstated at her current rank at the discretion of her employer and upon the satisfactory completion of substance abuse counseling as well as any psychiatric or psychological counseling deemed appropriate; and after her participation in such remedial police officer training program(s) as may be required by her employer.

On March 14, 2006, the Police Complaint Commissioner issued a notice arranging for a *Police Act* Public Hearing at the request of Cst. Eveleigh. The *Police Act* grants a municipal constable the right to a Public Hearing where the constable has been subjected to discipline more severe than a verbal reprimand.

On February 13, 2007, Cst. Eveleigh, through counsel, formally withdrew her request for a Public Hearing. An agreement had been reached between Cst. Eveleigh and her employer that she would retire from the Oak Bay Police Department.

The law requires the consent of the Police Complaint Commissioner before a hearing can be terminated, as the Police Complaint Commissioner has an independent right to initiate a Public Hearing. The sole issue to be determined is whether the public interest requires the hearing to proceed.

The Police Complaint Commissioner determined that the public interest would not be served by the hearing of all the circumstances. Cst. Eveleigh would no longer be a police officer following her retirement. The findings of substantiation and penalty imposed by the discipline authority would continue to form part of Cst. Eveleigh's service record. Taking into consideration all the factors, the Police Complaint Commissioner deemed it appropriate to consent to Cst. Eveleigh's request. On February 20, 2007, the Police Complaint Commissioner released a Notice of Withdrawal of Public Hearing.

Communicating with the Officers of Tomorrow...

In addition to providing civilian oversight of *Police Act* investigations, the OPCC also devotes many hours and resources to promoting awareness of the Police Complaint process to the police communities in British Columbia. As noted in the Woods Report,

Findings from this research suggest that education and awareness need to improve in order for sworn members to adequately understand their rights and responsibilities regarding the process for handling public complaints against the police.

The OPCC had many opportunities in 2007 to speak to the Police Academy's Recruit Classes at the Justice Institute, as well as other professional organizations about the role of the OPCC, the police complaint process and its affects on Complainants and Respondents, Supervisors and Field Trainers.



Photo courtesy of the Justice Institute of British Columbia

The Police Complaint Commissioner was a speaker at the Chilliwack Training Session where he spoke about Police Accountability and Independence. The Commissioner's session covered topics such as police independence, police accountability as well as criminal liability.

Symposiums, Conferences and Workshops...

The Commissioner was also a speaker at the Council of Canadian Administrative Tribunals 4th International Conference in Vancouver. His session covered the area of Assessing Credibility. Drawing upon his experiences as an International Prosecutor in The Hague; as a Crown Counsel

in British Columbia; and his current position as Police Complaint Commissioner, Mr. Ryneveld covered topics such as testing a witness's evidence against objective facts; inconsistencies in statements; and plausible explanations.

OPCC staff attended a national conference on internal police investigative issues hosted by the Toronto Police Internal Investigations Section. As well, members of the OPCC presented topics at the annual Canadian Association of Civilian Oversight of Law Enforcement (CACOLE).

A Legal Issues Training Seminar delving into the legalities of search warrants, arrest and investigative detention, and use of force issues was organized by the OPCC and held at the Justice Institute. The workshop was offered to Internal Investigators of the various police agencies. Senior Crown Counsel and Mr. Paul Ceyssens provided their legal expertise pertaining to search warrant applications. The workshop was well received and well attended with requests from the attendees for similar courses being offered in the future:

Reaching Beyond the Borders ... *Mexico*



Left: W. McKay INSYDE Representative in Mexico; right: W. MacDonald

In August of 2007, the OPCC's Mr. MacDonald was part of a seminar on police oversight in Chilpancingo, Mexico to review and discuss plans for the establishment of that country's first civilian oversight agency. Non-governmental organizations Fundar, Insyde and Tlachinollan had joined together to establish a civilian monitor of police in the Guerrero Mountains of Mexico - notorious for police corruption and violence associated with drug cartels involved in the manufacture and distribution of heroin. The Civil Monitor of Police and Security Forces commenced operations from the city of Tlapa in November 2007.

International representation at the seminar included representatives from the United States, Canada, Brazil, Mexico and South Africa. Each representative spoke about the experiences in their own country, and the importance of the civil monitoring of police in Guerrero to be independent and separate from government influences. The importance of the "transformation of police structures," was identified and that the need for change not only rests with the police, but also with the transformation of state systems of public security and the powers of the Attorneys for justice--adapting a new justice system which does not involve coercion or violence.



Left: Brazil's Former Ombudsman Professor Julita Lemgruber; right, OPCC's William MacDonald

Incident Summaries...

The Police Complaint Commissioner is required by section 50 of the *Police Act* to prepare reports of complaint dispositions. The following summaries are intended to provide a sampling of the complaints concluded during the reporting period of January 1st to December 31st, 2007. Complaints may be concluded in a variety of ways and the following is a sample of those dispositions, from informal resolutions to those involving disciplinary action.

Corrective or disciplinary measures range from none being warranted through to dismissal. All complaint dispositions are recorded in the Respondent officer's Service Record of Discipline.

With the exception of those cases that proceeded to Public Hearing, the disciplinary or corrective measures imposed reflect decisions made by the individual police department that employs the Respondent officer. All complaint investigations and dispositions are reviewed by the OPCC to determine whether further investigation is necessary, or if it is in the public interest to arrange a Public Hearing.

File No. 2007-3676-04 – Public Trust

Abuse of Authority

Incident as Reported

On February 23, 2007, the Respondent had taken a man from his home and into police custody under the provisions of the *Canada Immigration Act*. The police had no warrant for the man's arrest, and the man was detained for five hours before being released. Several citizens in the community felt that this detention was illegal and consequently filed multiple Third Party complaints with the OPCC.

Investigation

Due to the press coverage this incident received, the investigation was referred to another police department. The external investigator examined a number of documents, as well as video and audio recordings from the police department. Members of the Canada Border Services Agency were interviewed and a legal opinion was obtained in regards to the legality of the individual's arrest. The legal opinion concluded that the arrest and entry into the individual's residence was lawful and reasonable, hence the third party complaints were then concluded as *unsubstantiated*.

However, the Discipline Authority acknowledged that the individual would have been better served had he been given the opportunity to speak to the lawyer who was handling his immigration. As a result of this investigation, the department developed and adopted new policy relating to the arrest provisions under Section 55(1) and 55(2) of the *Immigration and Refugee Protection Act*. A training bulletin was also drafted and circulated amongst the members.

The OPCC reviewed the investigation file and legal opinion and concluded that the individual's arrest was lawful given the circumstances. The OPCC determined no further action was required and concluded their file as *unsubstantiated*.

The individual who was the subject of this complaint had informed the department that he did not want his arrest and detention to be in the newspaper. He had no issue with the department - the reason why he didn't file a complaint; however, he would have liked to have been provided access to his legal counsel.

File No. 2006-3107 – Monitor File

Incident as Reported

The suspect was arrested by undercover officers after a lengthy undercover investigation of a suspected drug dealer. In an underground parking lot, the officers attempted to arrest the suspect seated in a vehicle. The officers had shouted commands and had their firearms drawn. The suspect reached into his jacket and pulled out a handgun, which he reportedly moved to point at the officers. The officers responded by shooting the suspect. The suspect was taken into custody, and emergency medical assistance was requested to treat his non-life-threatening injuries.

The case was assigned to the department's Major Crime Section. Although a Form One was neither received by the police department, nor the OPCC, the case was still assigned to the department's Professional Standards Section, and the OPCC opened a Monitor file to track the progress of the investigation:

Investigation

A thorough investigation was completed by the department's Major Crime Section and the department's Professional Standards Section.

The investigation which included numerous statements from the police and a civilian witness, confirmed that the suspect was ordered a number of times to, "*Show me your hands.*" Despite these commands and the fact that the officers had their weapons drawn, the suspect still drew his pistol. One officer who had fired shots had clearly expressed to the suspect of his intentions, but the suspect still continued to be non-compliant. Another member had engaged the suspect at a distance of five feet, and when it became necessary, the trained member picked a small target on the suspect to shoot at. Considering the number of members present with weapons drawn, this officer's tactical handling eliminated a cross-firing situation.

The OPCC did an extensive review of the Major Crime file and internal investigation file. The OPCC requested a further witness be located and interviewed. This witness corroborated the evidence provided by the officers, confirming the officers' actions had been appropriate. The OPCC's file was closed as Reviewed and Closed.

Incident as Reported

Information was received from the department that the Respondent had disclosed police information regarding a suspected sex offender. CH News ran a story about the sex offender and included photos of the individual and copies of the police report.

Investigation

The Discipline Authority's investigation showed that the Respondent had attended a briefing for a dayshift and was made aware of a bulletin regarding a sex offender. The Respondent lived within several blocks of the offender and was concerned for his children and the other children in the neighbourhood. The officer brought home copies of the bulletin to show his family and copies of the bulletin were subsequently distributed to neighbours. Police received queries on the matter and attempted to retrieve all copies. The media became informed about the sex offender and aired the story.

The Discipline Authority concluded that the Respondent did commit the disciplinary default of 'Improper Disclosure of Information.' The Discipline Authority suspended the Respondent without pay for one (1) scheduled work day. As well, the Respondent had to complete the appropriate *Freedom of Information and Protection of Privacy Act* training.

The OPCC reviewed the investigation, the Discipline Authority's decision and the penalty imposed. It was concluded a Public Hearing was not required.

Incident as Reported

The Complainant alleges that on June 30, 2007, police officers "took down" a man who reportedly had a gun and dynamite. The Complainant felt excessive force was used on the man and as well, during the Complainant's interactions with these officers, she, herself, felt bullied. The Complainant also wanted the department to remove the Hell's Angels and secret society cult boys from within their force.

Investigation

The Investigator commenced an investigation and contacted the Complainant. The Complainant advised that she had moved out of the province and wanted to "drop" the complaint and have the investigation ceased.

The Investigator mailed a "Notice of Withdrawal of Complaint" form to the Complainant, and he received a signed copy back. The Professional Standards Section

ceased its investigation into these allegations and concluded the file as "Withdrawn". The OPCC confirmed that no further investigation was needed and the file was closed.

File No. 2007-3660 – Internal Discipline

Incident as Reported

The Respondent had forwarded to fellow members an inappropriate email. This email and the forwarding of it were in violation of the department's policy concerning computer networks and electronic information.

Investigation

An investigation was conducted into this allegation and the complaint was substantiated. The Respondent was served with a Written Reprimand regarding his breach of the department's internal policy by sending an inappropriate email over the police department's computer network. A copy of the Written Reprimand was placed on the Respondent's Service Record of Discipline.

File No. 2007-3652 – Public Trust

Abuse of Authority

Incident as Reported

The Complainant was playing an instrument on the street when he was threatened by a street person. The police were called but when they arrived, they "rousted" the Complainant, telling him that he was not allowed to play within 75 metres of the business he stood in front of or his instrument would be impounded. A witness tried to explain that the musician had been threatened and the police were misinterpreting the situation.

Investigation

The Internal Investigator spoke and met with the Complainant. The Complainant explained that he was actually involved in an altercation inside the business. The altercation became heated and the Complainant felt threatened and feared that his instrument might become damaged. The Complainant tried to coerce the other party inside the elevator located in the foyer of the building, so he could get assistance from the staff that occupied offices in that building.

The Complainant when speaking with the investigator understood that there was a legitimate reason for the police to be called and upon further reflection, the Complainant understood the police perspective in response to the incident. The Complainant no longer felt he had a complaint against the police and agreed to formally withdraw his complaint.

The OPCC reviewed the investigation, confirmed the withdrawal and closed their file.

Incident as Reported

On October 11, 2004, the Respondent was involved in a single vehicle traffic accident while off duty. Both the Respondent and another individual had left the accident on foot, and approximately 7 hours later, they attended an RCMP detachment and reported the accident. The Respondent denied he was the driver. The second individual claimed to be the driver and was charged.

Investigation

The comprehensive investigation revealed that the Respondent's DNA had been found on the driver's side air bag, indicating that the Respondent had been the driver, not the passenger, as he had indicated to the RCMP investigator. The allegation of improper off-duty conduct was substantiated. Had the Respondent not resigned, the Discipline Authority's decision to dismiss the Respondent would have been the appropriate discipline for his improper off-duty conduct. The Respondent's dismissal was documented in the event he should attempt to seek employment with any other police department.

Incident as Reported

The Complainants allege that the police department had executed a "warrantless search" on the rental suite of their residence, thereby breaching their *Charter of Rights*. The police in their search had discovered a marijuana grow operation. Charges were laid against the Complainants, which were later dismissed.

Investigation

The investigator reviewed the complete criminal investigation file; the court decision; and as well, he interviewed the Drug Squad Supervisor and obtained a statement from the Respondent officer.

It was determined that the Respondent was the lead investigator responsible for the investigation of a marihuana grow operation at the Complainant's residence. The Drug Squad had executed the search warrant and seized 246 marihuana plants and 15 pounds of dried marihuana.

In the court decision the Provincial Court Judge had ruled that the Respondent had inaccurately recorded in his search warrant application that he had attempted to contact a Judge or Justice. The Judge ruled that the actions of the Respondent breached the Charter and the evidence was excluded.

The Respondent acknowledged that he had committed an oversight by failing to contact a Provincial Court Judge or justice. The investigator found that the Respondent had been careless in his search warrant application. The disciplinary default of Neglect of Duty was substantiated; however, the allegation that the Respondent had committed an Abuse of Authority was unfounded. The Respondent had been in the lawful execution of his duty.

The Disciplinary Authority took a corrective approach and directed that the Respondent receive Management Direction. As well, the entire matter was reviewed by the Internal Investigators and the criminal investigation supervisors and the protocol for search warrant applications was further refined.

File No. 2007-3606 – Public Trust

Abuse of Authority

Incident as Reported

Based on information brought to the attention of the Department's Professional Standards Section by a senior officer, the Internal Investigator submitted a Form One to initiate a *Police Act* investigation. The three individuals involved in this complaint never filed a Form One complaint although they were encouraged to do so.

Officers had been called to assist with three unwanted male guests. When the Respondent had arrived at the scene, the situation had escalated from a verbal to a physical altercation. While the Respondent had taken control of one male, two other males began yelling and screaming. The Respondent handcuffed the first male, then unnecessarily engaged in a verbal altercation with the second male, who was now under the control of two other officers. The Respondent came around the officers and took the male to the ground, striking the male in the back of the head. Later while dealing with the same three individuals in the police booking area, the Respondent was observed to push one male into an interview room while he was still handcuffed, causing the male to fall.

Investigation

The two allegations of excessive force were investigated with respect to the Respondent. The first allegation of excessive force involving the head strikes was substantiated. The second allegation involving the push into the interview room was unsubstantiated. The Respondent cooperated with the investigators and admitted that he had concerns for his own safety due to the dark circumstances and the icy conditions in the parking lot; the presence of other unknown individuals; and the Respondent was not aware that the other two officers had arrived. The respondent received managerial direction.

The investigation was reviewed by the OPCC. Although the OPCC would have preferred a greater disciplinary measure imposed besides managerial direction, the OPCC felt confident that the Respondent would benefit from the proposed terms attached to that managerial direction, such as further training in conflict resolution techniques; direction

with respect to the appropriate use of force; and anger management training. The OPCC concluded their file, confirming the Discipline Authority's decision.

File No. 2007-3611 – Public Trust

Corrupt Practice

Incident as Reported

The Complainant was involved in a landlord/tenant dispute. The tenant in the dispute was the sister of a police constable and the Complainant was the landlord. The Complainant alleged that a letter, written on the department's letterhead, bearing the police officer's signature, was addressed, "To whom it may concern" and was presented in a package by the sister at an arbitration hearing. The Complainant felt this was a "blatant abuse of power, intention to intimidate and waste of the department's valuable and limited resources. Police officers are there to "serve and protect" it's citizens not to intimidate and abuse their privilege and authority." The Form 1 also contained concerns that "as a black person I am always aware of the racism exhibits (sic) by certain members of the force, openly stating their hatred/dislike for blacks."

Investigation

An investigation was conducted and the letter in question was a two-page letter bearing the department's official letterhead. The letter did not contain any disparaging or racial remarks about the Complainant, but it was written in support of the Respondent's sister's position in the landlord-tenant dispute. Regardless of the letter, the Dispute Resolution Officer decided in favour of the Complainant so the letter had little, if any, impact on the Complainant's dispute.

The Respondent admitted to composing the letter and having second thoughts about the appropriateness of using the department's letterhead. The Respondent did not believe that the letter would discredit him or the department. The Respondent readily admitted his default. His length of service and the seriousness of the default were taken into consideration when imposing discipline. The Respondent received managerial advice and offered an apology for his actions. The Chief Constable also issued a written apology to the Complainant. The OPCC reviewed the investigation, determined no further action was required and closed the file.

File No. 2006-3550 – Public Trust

**Improper Disclosure of Information
Improper Off-Duty Conduct
Deceit
Corrupt Practice**

Incident as Reported

It is alleged that the Respondent, who was seconded to an integrated unit and worked outside the confines of the police department, entered the business office of the department while off duty, and opened another member's email, accessing information subject to an investigation involving the Respondent's common law partner and ex-wife.

The Respondent printed the material, which was intercepted by another member. The incident was brought to the attention of senior management.

Investigation

The department immediately requested an Order for Investigation, which the Commissioner granted. A thorough investigation was conducted and an allegation of Improper Disclosure of Information; Improper Off-Duty Conduct; Corrupt Practice; and Deceit were substantiated against the Respondent.

With respect to the allegation of Improper Disclosure of Information and Improper Off-Duty Conduct, the Discipline Authority issued the penalty of two concurrent 5-day suspensions without pay. With respect to the allegation of Corrupt Practice, the Respondent was issued a Written Reprimand and for the final allegation of Deceit, the Respondent was given a reduction in rank for one year with performance monitoring. The OPCC reviewed the investigation file and agreed with the Discipline Authority's decision.

**The Respondent resigned from the department prior to the conclusion of the Police Act investigation.*

File No. 2006-3278 – Internal Discipline

Incident as Reported

The Respondent was involved in a pursuit which his Supervisor did not feel was in compliance with the Emergency Vehicle Driving Regulations (EVDR). The Respondent was spoken to about the incident and advised to re-acquaint himself with the EVDR policy. Approximately a year later the Respondent was involved in another pursuit which was not in compliance with the EVDR policy. The Respondent was advised as to what was expected from him and he was retrained as per the EVDR policy. The Respondent was involved in a third pursuit, and the disciplinary measure of a two-day suspension without pay was issued. The Respondent was advised that if there should be another occurrence, the department would be issuing further disciplinary measures, which may include termination.

Investigation

The OPCC found that the discipline issued in this matter to be appropriate. The investigation and the process undertaken by the Pursuit Review Board were both transparent and thorough. The OPCC did stress the importance of being made aware of internal discipline files before they are concluded for the sake of transparency. As well, issues may arise with respect to the characterization of a complaint, since one complaint may have more than one characterization.

During the recent review of the Police Act by Mr. Joe Wood, Q.C., the OPCC undertook a review of several historical Internal Discipline files not previously reported to the OPCC.

An understanding was reached with all departments concerning the importance of Internal Discipline files being brought to the OPCC's attention.

File No. 2007- 3776 – Public Trust

Neglect of Duty

Incident as Reported

The Complainant was arrested by the Respondent for a breach of undertaking. The Complainant alleged that when he was arrested he had approximately \$10 worth of returnable bottles. Upon his release from jail the bottles were not returned to him even though they were on his list of effects. The Complainant wanted to know what had happened to them.

Investigation

An investigation was conducted which included the review of various reports, written statements, and witness interviews. According to the Jail Booking Report, the Complainant's bottles were documented by the investigating officers, but the officers were diverted to another call and neglected to tag the property. The bottles were left in the trunk of the police vehicle and the only other person who would have had access to those bottles was a civilian hired to wash and clean the patrol cars before they are signed out. The civilian employee did not see any of the bottles. The bottles had either been lost, or thrown away during the time that the vehicle was in the Respondents' possession to the time the civilian employee had possession of the patrol car.

The Discipline Authority confirmed that the Respondents' neglectfulness in not tagging the Complainant's property was in contravention of departmental policy. Since the Complainant's source of income is bottle collecting, the department apologized for the error, and the Investigator provided the Complainant with a \$20.00 cheque to compensate for his loss.

Each officer received a verbal reprimand and was required to review departmental policy regarding prisoner's property. As well the officers were directed to write an apology letter to the Complainant. The investigation was reviewed by the OPCC and the file closed.

File No. 2007- 3614 – Public Trust

Discreditable Conduct

Incident as Reported

A call was dispatched to a two-person unit for their attendance to search a park where an individual was reported to have committed an indecent act. The police received information of a BC licence plate associated to the suspect. As it turned out, the suspect was the Respondent's elderly father. It was alleged that the Respondent may have interfered with the two officer's investigation and concluded the file without a complete and thorough investigation.

Investigation

An investigation was conducted, and it was found that the Respondent had involved himself with the file when he realized that the suspect was his father. The Respondent had documented in the synopsis that he had contacted the suspect; he had noted what the suspect had stated to him; and then he had concluded the file. It was during the review of the file by other members that concerns were raised about the Respondent's conflict of interest. The Sex Crimes Section continued their investigation and consulted with the Chief and the Professional Standards Section.

The Respondent acknowledged his embarrassment and frustration when he heard his father was the suspect. He had contacted his father for want of an explanation. The Respondent realized this was poor judgment, and he should have allowed the other officers to deal with the call. The Respondent accepted corrective and disciplinary measures in the form of a Written Reprimand and Managerial Advice. The OPCC concluded that the investigation was thorough and confirmed the Discipline Authority's decision and the disciplinary measures imposed.

File No. 2007- 3279 – Internal Discipline

***Discreditable Conduct
Improper Disclosure of Information***

Incident as Reported

It is alleged that the Respondent had written a sarcastic and abrasive letter to an American Sheriff's Department criticizing its organization. The Respondent identified his department as well as identifying himself as a police officer, thereby bringing the department's reputation into disrepute.

The Respondent also wrote and posted on the Internet approximately 17 abrasive articles that were critical of various Police Agencies and/or specific officers. Again, the Respondent identified himself and his department.

The final allegation involved the Respondent writing another Internet article which contained information he had obtained through his duties as a police officer. The officer had improperly disclosed this information once before, and he had been disciplined for Improper Disclosure by being issued a written reprimand.

Investigation

This internal investigation involved two allegations of discreditable off-duty conduct and the improper disclosure of information. The Respondent received a verbal reprimand for the two allegations of discreditable conduct and a two-day suspension for the allegation of improper disclosure of information. The OPCC had no concerns with respect to the discipline that was issued; however, the department had characterized the complaint as Internal Discipline. Since the Respondent had posted a number of his articles on the Internet, the OPCC felt that the complaint could have also been characterized as Public Trust. The OPCC concluded their file as substantiated.

**By the time the Internal Investigation had concluded, the Respondent had retired from the police department.*

File No. 2007-3669 – Public Trust

Improper Off-Duty Conduct

Incident as Reported

The Respondent was involved in an off-duty arrangement with a construction company to do overnight security of a construction site. The Respondent wore his uniform, was armed with his service firearm and used a marked police vehicle during his security guard employment at the construction site. The arrangement was not authorized by the Chief or any other superior ranking officer.

Investigation

The investigation into this matter confirmed that the shift supervisor at the construction site had offered the Respondent overnight security employment. The employment was a private arrangement with the Respondent. The Respondent's sergeant had been present when the Respondent had accepted the offer.

The Respondent's department does not have an explicit policy which prevents its members from using police equipment or wearing Department uniforms during off-duty hours. The investigator believed that the Respondent had discredited the police department, and although the responsibility ultimately rests with the Respondent, the investigator also had concerns with the sergeant's implied consent. The Improper Off-Duty conduct allegation was substantiated against the Respondent, and he received a Written Reprimand. The investigator recommended that the department draft Procedures and/or Policy with respect to the use of Department equipment. The OPCC confirmed the Discipline Authority's findings and closed its file.

File No. 2005-2958 – Public Trust

Improper Off-Duty Conduct

Incident as Reported

The department requested an Order for Investigation from the OPCC with respect to one of its members. It is alleged that the member was found in a vehicle under the influence of alcohol. The member was issued a 24-hour suspension from the RCMP. It is further alleged that the officer showed his police identification and claimed he had been up all day as a result of working an undercover project.

Investigation

The Department's Professional Standards Section completed a comprehensive investigation into this incident. The investigation revealed that the Respondent was off-duty and had operated his personal vehicle. An RCMP officer had found the Respondent

asleep or passed out in the driver's seat of the vehicle. The Respondent had twice produced his police identification and misled the investigator about his recent undercover activities. The allegation of Improper Off-Duty conduct was substantiated against the Respondent. The Discipline Authority proposed a two-day suspension without pay. A Discipline Hearing was scheduled; however, the Respondent had resigned from the department prior to the Hearing taking place.

The OPCC confirmed the conclusions and recommendations of the Discipline Authority and closed its file.

2007 Statistics...

In June of 2006 we updated our records system to a new program originally designed by Systemtek Consulting and the Saanich Police Department. This new *Police Act Complaint Tracking System (PACTS)* allows our office to track individual allegations of misconduct and their disposition, rather than the complaint received as a whole. When a complaint is received in our office, a file is opened and assigned to an analyst. A complaint file often contains more than one allegation of a disciplinary default and may involve several Respondent police officers. For example: A complaint alleging officers entered a residence without a warrant may also allege the officers used excessive force to restrain and arrest one of the occupants, yelled profanities or insulting language at another, and seized property that was subsequently lost. Our previous system would have recorded this as simply one complaint *file*, whereas our new system allows us to, in addition to tracking files received, break down the complaint into the specific misconduct allegedly committed by the individual officers. In this example, it would likely have been categorized into 2 counts of Abuse of Authority involving 3 officers, 2 counts of Neglect of Duty involving 2 officers and possibly 1 count of Discreditable Conduct involving 1 officer.

A single complaint file may also result in various dispositions. Using the example from above, an allegation of Abuse of Authority may be found substantiated against two of the officers, and unsubstantiated against the third officer. Similarly, the disciplinary or corrective measures imposed against the two officers may be different depending on the circumstances.

All these variables are now captured on PACTS, allowing the Commissioner to present reports and statistics with greater accuracy and identify emerging trends in certain conduct.

Previously closed complaints prior to 2006 are currently being updated in the new PACTS system to allow for future comparison of statistics from previous years.

Complaint Files Opened						
	2007	2006	2005	2004	2003	2002
Abbotsford	29	16	14	19	20	17
Central Saanich	3	4	5	2	8	6
BCCFSEU	1	1	0	1	0	0
Delta	16	23	14	8	18	20
Esquimalt	N/A	N/A	N/A	N/A	N/A	14
GVTAPS	18	15	N/A	N/A	N/A	N/A
Nelson	10	3	1	7	6	8
New Westminster	17	25	20	22	27	19
Oak Bay	2	1	6	1	1	4
Port Moody	3	3	4	4	5	2
Saanich	28	28	35	21	28	25
Stl'atl'imx	0	0	1	0	0	2
Vancouver	244	269	220	182	237	204
Victoria	80	98	91	93	96	77
West Vancouver	25	17	15	12	10	9
TOTAL:	476	503	426	372	456	407

- As of December 3rd, 2002, complaints regarding municipal members of the BC Combined Forces Special Enforcement Unit (BCCFSEU) fall within the mandate of the OPCC.
- As of January 1st, 2003, Esquimalt Police Department was formally amalgamated with the Victoria Police Department.
- As of December 5, 2005, the Greater Vancouver Transportation Authority Police Service (GVTAPS) became an officially recognized police agency pursuant to the Police Act.

Files with the OPCC...

Ordered Investigations:

A Police Act investigation pursuant to Division 4 (Public Trust Complaints) may be initiated by:

- Receipt of a Form One Record of Complaint (submitted by a citizen or, in some cases, by a senior officer for administrative purposes); or
- The Police Complaint Commissioner may order an investigation pursuant to section 55(3) of the *Police Act*. This may be at the request of a department, or as a result of information received by the Commissioner that is deemed to be in the public interest.

In 2007, there were **70** files that were initiated by way of an Order for Investigation issued by the Commissioner. Of those 70 files, **68** were at the request of the originating police department.

Monitor Files & Non-Lodged Files:

In addition to files that are opened as a result of a Form One Record of Complaint being submitted or a Commissioner's Ordered Investigation, the OPCC also opens files that may potentially become formal *Police Act* complaints.

Monitor Files are opened when information is received by the OPCC from the police or other sources including media reports that *may* require an investigation pursuant to the *Police Act*. These are typically incidents that are serious in nature or that have generated media attention, but where no potential disciplinary defaults have been identified to date. These files are held open until a report is received from the police, the matter reviewed and a decision is made as to whether an Ordered Investigation is required. If no action is deemed necessary, the file is concluded as "Reviewed & Closed". Of the files opened in 2007, **26** were designated as Monitor Files.

Non-Lodged Files are those where information is received from a citizen either orally or in writing. The person is advised that in order for the matter to become a formal *Police Act* investigation, they must complete and submit a Form One Record of Complaint. If the person declines to submit a Form One, the matter *may* be investigated depending on the severity of the allegations. Of the files opened in 2007, **28** were Non-Lodged files. As with Monitor files, if no further action is required, the file is concluded as "Reviewed & Closed".

External Public Trust Investigations:

Any complaint, whether it is initiated by receipt of a Form One Record of Complaint or is an Ordered Investigation, may be investigated by a police agency other than the police department where the complaint originated. If the Police Complaint Commissioner determines that a potential or perceived bias exists, the investigation may be referred to another police agency, including the RCMP. The Discipline Authority may also request that a complaint be investigated externally. Of the 476 files opened in 2007, **11** were investigated by an external agency.

Characterization of Complaints...

Every allegation contained in a filed Form One Record of Complaint must be characterized as one, or more, of the following:

- Public Trust
- Internal Discipline
- Service or Policy

**Allegations Received in 2007
By Characterization & By Department**

	<i>Public Trust</i>	<i>Internal Discipline</i>	<i>Service or Policy</i>	<i>Not Char'd</i>
<i>Abbotsford</i>	32	1	0	3
<i>Central Saanich</i>	4	0	0	0
<i>BCCFSEU</i>	0	1	0	0
<i>Delta</i>	16	2	1	1
<i>GVTAPS</i>	19	0	0	0
<i>Nelson</i>	12	0	0	0
<i>New Westminster</i>	12	4	0	2
<i>Oak Bay</i>	2	1	0	0
<i>Port Moody</i>	4	0	0	0
<i>Saanich</i>	37	0	0	1
<i>St'l'at'l'imx</i>	0	0	0	0
<i>Vancouver</i>	302	4	2	15
<i>Victoria</i>	79	1	1	16
<i>West Vancouver</i>	18	2	1	2
TOTAL:	537	16	5	40

Complaint Files Closed in 2007

	<i>2007</i>	<i>2006</i>	<i>2005</i>	<i>2004</i>	<i>2003</i>	<i>2002</i>
<i>Abbotsford</i>	34	13	11	20	17	16
<i>Central Saanich</i>	2	4	4	7	4	9
<i>BCCFSEU</i>	0	0	1	0	0	0
<i>Delta</i>	20	14	11	10	18	15
<i>Esquimalt</i>	N/A	N/A	N/A	1	8	12
<i>GVTAPS</i>	17	3	N/A	N/A	N/A	N/A
<i>Nelson</i>	8	1	8	2	9	3
<i>New Westminster</i>	17	24	21	21	17	16
<i>Oak Bay</i>	3	3	4	1	2	2
<i>Port Moody</i>	4	5	2	6	2	3
<i>Saanich</i>	24	32	32	17	32	26
<i>St'l'at'l'imx</i>	0	1	0	0	0	3
<i>Vancouver</i>	278	273	183	209	145	197
<i>Victoria</i>	66	100	88	89	101	68
<i>West Vancouver</i>	20	9	16	10	11	9
TOTAL:	493	482	381	393	366	379

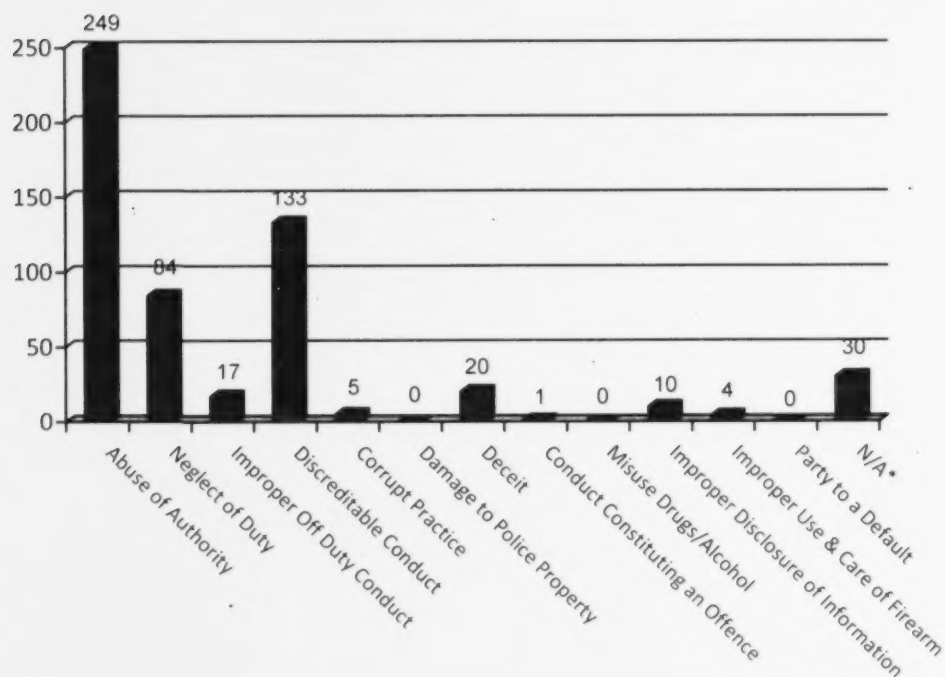
Allegations Closed in 2007 by Default...

(Defaults may or may not have been substantiated)

A complaint lodged against an officer may contain one or more allegations of a discipline default as defined by the *Code of Professional Conduct Regulations*, B.C. Reg. 205/98. The *Code* lists the following potential defaults:

Abuse of Authority
Neglect of Duty
Improper Off-Duty Conduct
Discreditable Conduct
Corrupt Practice
Damage to Police Property

Deceit
Conduct Constituting an Offence
Misuse of Drugs/Alcohol
Improper Disclosure of Information
Improper Use & Care of Firearm
Party to a Disciplinary Default



* Refers to files such as non-lodged, monitor or service and policy where no disciplinary default is identified.

Disposition of Allegations Concluded in 2007...

A complaint received from a citizen may contain many allegations and may involve more than one police officer. The following chart reflects the disposition of individual allegations of disciplinary defaults against each Respondent officer associated to the file.

Disposition of Allegations Concluded in 2007							
	<i>Withdrawn</i>	<i>Reviewed & Closed</i>	<i>Informally Resolved</i>	<i>Mediated</i>	<i>Summarily Dismissed</i>	<i>Not Substantiated</i>	<i>Substantiated</i>
Abbotsford	7	6	4	0	5	27	0
Central Saanich	0	0	0	0	0	8	0
BCCFSEU	0	0	0	0	0	0	0
Delta	0	1	0	1	2	13	8
GVTAPS	1	0	4	0	7	9	2
Nelson	0	0	0	0	3	18	0
New Westminster	4	4	0	0	0	10	4
Oak Bay	0	1	0	0	0	0	2
Port Moody	0	1	0	0	1	3	1
Saanich	9	0	5	0	5	23	5
Stl'at'imx	0	0	0	0	0	0	0
Vancouver	128*	34	6	0	87	341	50
Victoria	14	3	15	0	48	18	6
West Vancouver	4	4	1	0	9	7	10
TOTAL:	167	54	35	1	167	477	88

W *Withdrawn*

R&C *Reviewed & Closed – For Service and Policy complaints Monitor and Non-Lodged complaints. Upon receipt of the final response by the police board or department, the OPCC reviews and closes the file.*

IR *Informal Resolution*

M *Mediated*

SD *Summarily Dismissed – The Discipline Authority can summarily dismiss a complaint if: there is no likelihood further investigation would produce evidence of a default; the incident occurred more than 12 months prior to filing the complaint; or the complaint is frivolous or vexatious.*

NS *Not Substantiated – Following an investigation, the Discipline Authority determines there is no evidence to support the allegation of a default.*

**Corr/
Disc** *Substantiated – Following an investigation, the Discipline Authority determined the complaint was Substantiated and ordered corrective and/or disciplinary measures.*

**No
C/D** *Substantiated – Following an investigation, the Discipline Authority determined the complaint was substantiated, but that disciplinary and/or corrective measures are not warranted.*

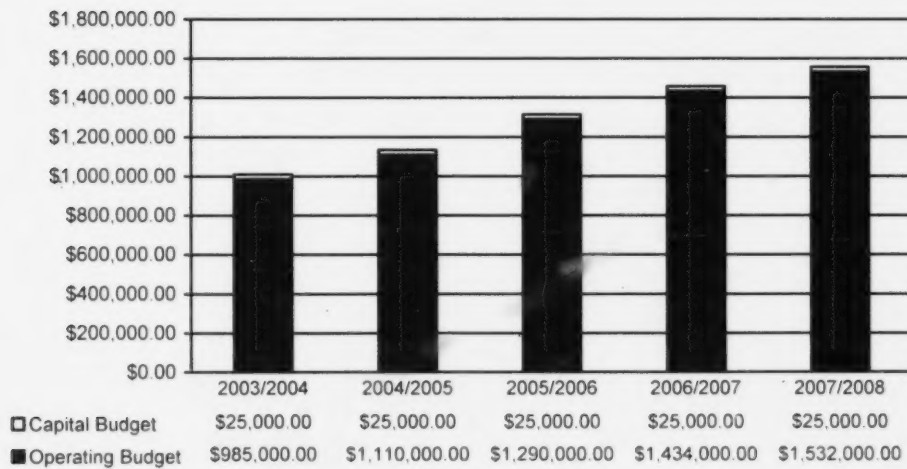
* The number of "Withdrawals" for the Vancouver Police Department is higher than usual due to a complaint that involved numerous allegations against many officers. Of the 128 Withdrawals, 98 related to this one file. The complaint was lodged by the PIVOT Legal Society regarding allegations of non-cooperation by officers during an earlier investigation. The issues were resolved through discussions, resulting in the allegations being withdrawn.

Budget...

Fiscal Year ending March 31st, 2008:

Number of Staff:	8 FTE's
Total Operating Budget:	\$1,532,000.00
Total Capital Budget:	<u>\$ 25,000.00</u>

TOTAL: \$1,557,000.00



FTE's Allotted	11	9	6	7	8
		(6 filled)			

Municipal Police Agencies in British Columbia...

Abbotsford Police Department
2838 Justice Way
Abbotsford, BC V2T 3P5
Tel: (604) 859-5225
www.abbotsfordpolice.org

Central Saanich Police Service
1903 Mount Newton Cross Road
Saanichton, BC V8M 2A9
Tel: (250) 652-4441
www.cspolice.ca

BC Combined Forces
Special Enforcement Unit
(BC Organized Crime Agency)
Tel: (604) 777-7800
www.ocabc.org

Delta Police Department
4455 Clarence Taylor Crescent
Delta, BC V4K 3E1
Tel: (604) 946-4411
www.deltapolice.ca

GVTAPS
307 Columbia Street
New Westminster, BC V3L 1A7
Tel: (604) 515-8300

Stl'atl'imx Tribal Police Service
22 Retasket Drive, PO Box 488
Lillooet, BC V0K 1V0
Tel: (250) 256-7784

Vancouver Police Department
312 Main Street
Vancouver, BC V6A 2T2
Tel: (604) 717-3535
www.city.vancouver.bc.ca/police

Nelson Police Department
606 Stanley Street
Nelson, BC V1L 1N4
Tel: (250) 354-3919
www.city.nelson.bc.ca

New Westminster Police Service
555 Columbia Street
New Westminster, BC V3L 1B2
Tel: (604) 525-5411
www.newwestpolice.org

Oak Bay Police Department
1703 Monterey Avenue
Victoria, BC V8R 5V6
Tel: (250) 592-2424
www.oakbaypolice.org

Port Moody Police Department
3051 St. John's Street
Port Moody, BC V3H 2C4
Tel: (604) 461-3456
www.portmoodypolice.com

Saanich Police Department
760 Vernon Avenue
Victoria, BC V8X 2W6
Tel: (250) 475-4321
www.saanichpolice.ca

Victoria Police Department
850 Caledonia Street
Victoria, BC V8T 5J8
Tel: (250) 995-7654
www.victoriapolice.org

West Vancouver Police Department
1330 Marine Drive
West Vancouver, BC V7T 1B5
Tel: (604) 925-7300
www.westvancouverpolice.ca

Complaints against the RCMP in British Columbia should be directed to:

Commission for Public Complaints Against the RCMP
Suite 102, 7337 – 137 Street
Surrey, BC V3W 1A4

Telephone: (604) 501-4080 or toll free at: 1 (800) 665-6878

